IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

Crl.Rev.Pet.No. 2486 of 2006(Y)

CRA.211/2003 of ADDL.SESSIONS COURT-II, KOZHIKODE
SC.343/2001 of III ADDL.ASSISTANT SESSIONS COURT, KOZHIKODE

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REVN. PETITIONER/APPELLANT/ACCUSED:

SURENDRAN PUTHUPARAMBIL, S/O.MADHAVAN,
AGED 41 YEARS, KODANCHERRI AMSOM DESOM,
KOZHIKODE.

BY ADV. SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTING S.I. OF POLICE,
THIRUVAMBADY POLICE STATION, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.A.SALIM

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.R.P.No. 2486 of 2006

ORDER

The accused, convicted and sentenced for offence under Section 55(g) of th Abkari Act (hereinafter referred to as 'the Act') concurrently by the courts below, is the revision petitioner.

2. The petitioner was charge sheeted by the S.I. of Police, Thiruvambady for offences under Sections 55(a) and(g) of the Act on the allegation that he was found engaged in distilling illicit arrack by around 7.30 a.m. on 29.12.1999 at the courtyard in front of his house. He was arrested along with the utensils and about 300 ml. of illicit arrack and wash were also taken into bandavast. After due investigation, the C.I. of Police, Thamarassery laid charge against the petitioner for offences under Sections 55(a) and (g) of the Act before the Judicial First Class

Magistrate's Court, Thamarassery. The learned Magistrate, after complying with all legal formalities committed the case to the Sessions Division, Kozhikode. The Sessions Judge made over the case to the court of the Assistant Sessions Judge, Kozhikode for trial and disposal. The Asst. Sessions Judge heard preliminary arguments of the prosecution and the defence counsel; framed charge against the petitioner for offence under Sections 55(a), (b), (f) and (g) of the Act; read it over to the petitioner and questioned him. Thereupon, he pleaded not guilty and consequently a trial of the case was conducted.

3. Prosecution examined PWs 1 to 6, got marked Exhibits P1 to P9 and got identified MOs 1 to 6. On the prosecution closing their evidence, the petitioner was questioned under Section 313 Cr.P.C. Thereupon he generally denied all incriminating circumstances appearing in evidence against him and maintained that he is innocent. The learned Asst.

Sessions Judge was not of the view that the case is one where an order of acquittal could be passed under Section 232 Cr.P.C. Consequently, he called upon the petitioner to enter upon his defence and posted the case for defence evidence. However, the petitioner did not adduce any evidence in defence.

4. The Asst. Sessions Judge considered the case in the light of the evidence adduced as aforesaid and came to the conclusion that the prosecution has been able to prove the offence attracting only Section 55(g) of the Act. Consequently, he convicted the petitioner for offence under Section 55(g) of the Act, questioned him regarding sentence and sentenced him to undergo simple imprisonment for a term of four years and to pay a fine of Rupees one lakh and in default to undergo simple imprisonment for a further term of one year. The petitioner filed Crl.A.No.211/03 before the Sessions Court, Kozhikode. The II Addl. Sessions Judge, vide judgment in Crl.A.No.211/03, confirmed

the conviction of the petitioner under Section 55 (g) of the Act, but modified and reduced the substantive sentence of imprisonment to one year, maintaining further the sentence of fine and the sentence in default of payment of fine. Hence, this revision.

5. It is contended before me by the learned counsel for the petitioner that there is no convincing and reliable evidence to hold the accused guilty of the offence punishable under Section 55(g) of the Act in view of the shabby and inconsistent evidence tendered by PWs 1, 2 and 5, of whom, PW1 is the S.I. of Police, who detected the offence; PW5 is the Police Constable, who accompanied him in the detection of the crime and PW2 is an independent eye witness. The evidence of PW1 is to the effect that when they approached the scene of occurrence, which is the courtyard of the house of the petitioner/accused, they saw the petitioner distilling arrack and in the presence of

witnesses, the utensils used for distillation of arrack; the wash and the arrack were taken into bandavast under Exhibit P1 mahazar and also effected arrest of the accused recording Exhibit P2 arrest memo. According to him, there was 300 ml. of arrack in a bottle and that is MO4 and there was wash in MO1 aluminium vessel upto half of its capacity and from therein 350 ml. of wash was taken as sample and was sealed and rest of the wash was destroyed. According to PW2, he, along with other workers of the Madyanirodhana Samithi accompanied the police to identify the house of the accused and that when he reached there, the police had already apprehended the accused. He has identified Exhibit P1 seizure mahazar wherein he is a witness and identified Mos 1 to 6, as the articles seized by the police. All the same, he is very vehement in asserting that the accused is one, who is engaged in distillation of arrack; and that they had warned him even earlier. He also states that it was

himself and other members of the Madyanirodhana Samithi, who gave information to the police. According to PW5, the police Head Constable, who was accompanying PW1 in the detection of the crime, the sample of wash was being taken in a 750 ml. bottle and not in a 350 ml. bottle. Thus, there is inconsistency in the matter of materials details regarding the detection and seizure.

6. According to PW1, he did not take the witnesses in the jeep and the witnesses did not enter into the jeep and they were walking about three hundred metres to reach the house of the petitioner/accused. The evidence of PW2 is to the effect that he along with the witness Baby were waiting for the police; that the police were being got down in the vehicle engaged by them and that they also got into the jeep from Kakkadampoyil ground, where they were waiting for the arrival of the police. PW5, the Head Constable, who accompanied the S.I. of Police in the detection of

the crime, had a different version that the witnesses did not come in the police jeep and that they did not go in the jeep engaged by the witnesses. Thus, two jeeps were used - one the police jeep and the other, a jeep engaged by the workers of the Madyanirodhana Samithi, wherein PW2 and others travelled. Thus, even in the matter of the detecting officer and the witnesses going over to the scene of occurrence, there are different versions from PWs 1, 2 and 5. If at all the detection and search is true, I have no doubt that such inconsistencies will not be there in the version of PWs 1, 2 and 5.

7. It is also worthy to note that though the crime was registered for offences under Sections 55 (a), (b), (f) and (g) of the Act, the learned Asst. Sessions Judge found the petitioner not guilty of the offences under Sections 55(a), (b) and (f) of the Act for reason of the defect in the procedure adopted by the investigating agency. Considering

the gravity of the crime and the minimum fine to be imposed on an accused found guilty of the offence under Section 55(g) of the Act, which shall not be less than Rupees one lakh, I am of the view that the accused cannot be found guilty on such shabby evidence, unless the detection and seizure is established on convincing and reliable evidence from truthful witnesses, who are capable of inspiring confidence in judicial mind. That is lacking in the instant case. In the circumstances, I am of the view that the conviction entered into against the petitioner by the courts below under Section 55(g) of the Act is improper, illegal and irregular and consequently, the conviction and sentence passed against the petitioner deserves to be set aside.

In the result, allowing this revision, I set aside the conviction and sentence passed against the petitioner by the courts below and acquit him of the offence under Section 55(g) of the Act. His

bail bond shall stand cancelled.

5th January, 2007 (K.P.Balachandran, Judge)

tkv